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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,436	03/08/2002	Tooru Hasegawa	020256	8773
38834	7590	08/25/2005	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036				SWEARINGEN, JEFFREY R
		ART UNIT		PAPER NUMBER
		2145		

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/092,436	HASEGAWA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey R. Swearingen	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 June 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-9 are directed to a traffic monitoring system and method. The claims are not directed to programs on computer-readable media. The claims state no computer hardware to execute any programs that might exist on computer-readable media. The claims could embody a group of persons standing on street corners analyzing motor traffic and reporting to a manager in their current claim embodiments. Applicant is strongly urged to severely rework the claims to embody computer hardware and computer executable instructions stored on computer readable media.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Mayton et al. (U.S. Patent No. 6,763,380).

5. In regard to claims 1 and 4, Mayton discloses *a plurality of active monitors each tapping a physical line on a network and analyzing traffic; and a manager collecting analysis results from said active*

Art Unit: 2145

*monitors, respectively, wherein said manager comprises: means for loading a management application program for managing the respective active monitors to the manager itself; means for executing said management application program; means for delivering a traffic analysis program to each of said active monitors; and means for communicating with said active monitors, each of said active monitors comprises: means for loading the traffic analysis program delivered from said manager to the active monitor itself; means for executing said traffic analysis program; and means for communicating with said manager, and wherein each of said active monitors provides a traffic analysis result to said manager through said communication means in response to a request from said manager.* See Mayton, abstract; column 2, lines 24-25; column 2, lines 36-39; column 2, lines 42-45; column 3, lines 16-22; column 3, lines 24-25; column 3, lines 33-38; column 5, lines 40-65; column 5, line 66 – column 6, line 13; column 6, lines 52-60; column 6, line 66 – column 7, line 3. Mayton discloses active monitor nodes running a traffic monitoring program, analyzing traffic, and sending the results to the manager [console node] on a schedule [in response to a request]. Delivering a traffic analysis program to a monitor from a manager is considered inherent to the theory of active networking. By this rationale claims 1 and 4 are rejected.

6. In regard to claim 7, Mayton is applied as in claim 4. Mayton further disclose *said manager holds topology information concerned about the respective active monitors on a network, and manages traffic based on the analysis results collected from said respective active monitors and said topology information.* See Mayton, column 1, lines 15-32; column 2, lines 52-69; column 3, lines 33-46; column 6, lines 1-26; column 6, lines 52-56. By this rationale claim 7 is rejected.

7. In regard to claim 8, Mayton is applied as in claim 4. Mayton further discloses *changing operation parameters for the traffic analysis program, the traffic analysis program now being executed by each of the active monitors.* Mayton discloses a user controlling operations on a monitor. See Mayton, column 13, lines 44-49. By this rationale claim 8 is rejected.

8. In regard to claim 9, Mayton is applied as in claim 4. Mayton further discloses *each of said active monitors identifies a packet and a protocol under control of said traffic analysis program.* See Mayton, column 8, lines 44-63. By this rationale claim 9 is rejected.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton and Hanchett (U.S. Patent No. 6,834,301).

11. In regard to claims 2-3 and 5-6, Mayton is applied as in claims 1 and 4. Mayton fails to disclose unloading a network management program from a manager or a monitor. However, Hanchett discloses that each end node may install and uninstall software. See Hanchett, column 4, lines 15-20. It would be obvious to one of ordinary skill in the art at the time of the invention to remove any program from a computer, including network management software, such as a management application program and a traffic analysis program, if that program was no longer needed. It would further be obvious for a manager to unload a program since any other computer in the network can unload a program if not needed and the manager is a computer in the network. If the manager's management program is not needed, it would be obvious to one of ordinary skill in the art to unload the management program from the manager to conserve system resources. By this rationale claims 2-3 and 5-6 are rejected.

***Response to Arguments***

12. Applicant's arguments filed 6/23/2005 have been fully considered but they are not persuasive.

13. The Examiner appreciates Applicant's amendments to the drawings. The Examiner also appreciates Applicant's willingness to remove the Japanese characters from Figure 1. The objection to the drawings is hereby withdrawn.

14. The Examiner appreciates Applicant's amendments to the Abstract of the Disclosure. The objection to the Abstract is hereby withdrawn.

Art Unit: 2145

15. Applicant's traversal of the 101 rejection is not persuasive. A "disk device" is not limited to tangible, statutory computer-readable media. Applicant still claims software, *per se*.
16. Applicant argues that Mayton does not disclose *means for delivering a traffic analysis program to each of said active monitors*. The Examiner disagrees. Mayton is based on the theory of active networking. Applicant acknowledges that this application is related to active networking by citing a paper by Tennenhouse et al. from January 1997. A prior paper by Tennenhouse and Wetherall, from April 1996, states in the first sentence of the abstract that "Active networks allow their users to inject customized programs into the nodes of their networks." Thus, by Tennenhouse and Wetherall's definition of active networking from 1996, active networking is a *means for delivering a traffic analysis program to each of said active monitors*. The Examiner has included this paper, and several other papers on active networking, as a courtesy to Applicant and to complete the legal record.
17. Applicant argues that Mayton does not disclose *allowing said manager to request said active monitors to load a traffic analysis program and allowing said active monitors to load and execute the traffic analysis program in response to said load request*. Mayton discloses that the console node may control initiation and scheduling of end node acquisition of data. This is *allowing said manager to request said active monitors to load a traffic analysis program and allowing said active monitors to load and execute the traffic analysis program in response to said load request*.
18. Applicant argues again that active network theory does not suggest delivering the program to the active monitor of the present invention. The Examiner refers Applicant again to paragraph 16 of this Office Action. The Examiner is not suggesting a "combination of the Mayton et al. disclosure in view of DARPA active network theory"; the Examiner has not made a rejection under 35 U.S.C. 103. The Examiner is relying on an inherent definition of active networking and has provided evidence supporting that definition and reliance to Applicant.
19. Applicant has not argued the rejection of claims 2, 3, 5, and 6 based on Mayton in view of Hanchett beyond what has already been addressed concerning the Mayton reference in paragraphs 16-18 of this Office Action.
20. The Examiner appreciates Applicant's correction of the informality in claims 7-9.

Art Unit: 2145

***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
22. Towards an Active Network Architecture. David L. Tennenhouse and David J. Wetherall. ACM SIGCOMM Computer Communication Review. Volume 26, Issue 2. April 1996. pp. 5-17.
23. Smart Packets: Applying Active Networks to Network Management. Beverly Schwartz et al. ACM Transactions on Computer Systems. Volume 18, Issue 1. February 2000. pp. 67-88.
24. DARPA Active Networks – What is an active network? <http://www.sds.lcs.mit.edu/darpa-activenet/mission.html> April 30, 1997.
25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571-272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2145

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 17/07

  
Jason CARBONE  
PRIMARY OR 2145